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7 UNITED STATES DISTRICT COURT
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA
9 OAKLAND DIVISION
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11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 vs.

14 EURAL WILLS II,

15 Defendant.
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Case No: CR 94-00007 SBA

**ORDER RE SUPPLEMENTAL
BRIEFING**

17 On September 27, 1994, Defendant was convicted by a jury of bank robbery and
18 related offenses. Dkt. 115. On January 31, 1995, Defendant was sentenced by Judge Fern
19 Smith to a term of 30 years and 108 months in custody and 5 years of supervised release,
20 and ordered to pay \$35,760 in restitution to the victim, Bank of America. No fine was
21 imposed. Dkt. 144.¹ Defendant's payment plan currently requires him to pay \$25 per
22 month towards his restitution obligation.

23 Defendant has now filed a request to reduce his restitution payments to \$25 per
24 quarter on the grounds that he is no longer able to work due to his medical condition. More
25 specifically, Defendant is suffering from renal failure and undergoing dialysis treatments
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27 _____
28 ¹ The action was reassigned to the undersigned following Judge Smith's departure
from the bench.

1 three times a week at the Bureau of Prison's medical facility in Springfield, Illinois. Dkt.
2 235.

3 Under 18 U.S.C. § 3664(k), a district court has the discretion to modify a restitution
4 order based on a material change in the defendant's economic circumstances. Section
5 3664(k) provides:

6 A restitution order shall provide that the defendant shall notify
7 the court and the Attorney General of any material change in
8 the defendant's economic circumstances that might affect the
9 defendant's ability to pay restitution. The court may also accept
10 notification of a material change in the defendant's economic
11 circumstances from the United States or from the victim. The
12 Attorney General shall certify to the court that the victim or
13 victims owed restitution by the defendant have been notified of
14 the change in circumstances. Upon receipt of the notification,
15 the court may, on its own motion, or the motion of any party,
16 including the victim, adjust the payment schedule, or require
17 immediate payment in full, as the interests of justice require.

18 18 U.S.C. § 3664(k) (emphasis added).

19 In its response, the Government notes Defendant has failed to provide any
20 documentary support for his request with his moving papers—but states that “if [he] is able
21 to provide such documentation . . . , the United States does not oppose the Court adjusting
22 the restitution payment schedule to accommodate the demonstrated ‘material change’ in
23 [his] current ability to pay \$25 per month.” Dkt. 238 at 1-2. In response, Defendant has
24 submitted a reply brief and attached documentation to confirm that he is receiving dialysis
25 treatments and therefore unable to work. Dkt. 240.

26 The documentation filed by Defendant appears to support his claim that there has
27 been a material change in his economic circumstances that might affect his ability to pay
28 restitution. See 18 U.S.C. § 3664(k). However, before the Court can modify Defendant's
restitution schedule, § 3664(k) requires that the Government must “certify to the court that
the victim or victims owed restitution by the defendant have been notified of the change in
circumstances.” Id. There is no indication in the record that the victim, Bank of America,
has yet been notified of Defendant's request to modify his restitution payment schedule.
Accordingly,

1 IT IS HEREBY ORDERED THAT the Government shall notify Bank of America of
2 Defendant's request to modify his restitution payment schedule and the reasons therefor,
3 and certify to the Court that such notice has been provided. The government shall provide
4 the certification within twenty-one (21) days of the date this order is filed. The Court will
5 then take Defendant's request under submission.

6 IT IS SO ORDERED.

7 Dated: January ³¹, 2014


8 SAUNDRA BROWN ARMSTRONG
9 United States District Judge
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